



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 18, 1997

Mr. John Riley  
Director, Litigation Support Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR97-2782

Dear Mr. Riley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111221.

The Texas Natural Resource Conservation Commission (the "commission") received a request for nine categories of documents concerning the City of Farmers Branch Municipal Solid Waste Facility. You state that you will release some of the requested information. You claim, however, that portions of the remaining requested information is protected from disclosure by section 552.101 of the Government Code under the informer's privilege. You seek to withhold any information which identifies a person who made a complaint to the commission about the waste facility. You have highlighted the information you wish to withhold on the complaints. We have considered the exception you claim and have reviewed the sample documents that you have submitted.<sup>1</sup>

Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who

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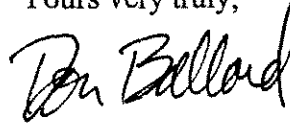
<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5.

In this instance, you have shown that the persons named in the complaints have reported possible violations of state law or state disposal regulations over which the commission has enforcement duties. The complaints concern possible violations of the Texas Solid Waste Disposal Act, section 330.1004 of the Texas Administrative Code, or sections 361.601 - .613 of the Health and Safety Code. After examining your arguments and the submitted documents, we conclude that the commission may withhold the identifying, highlighted information under the informer's privilege.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 111221

Enclosures: Submitted documents

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